

## *Roman Catholic Ambivalence Toward Religious Freedom: Harmonizing Change and Continuity in Dignitatis Humanae Personae*

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### **ABSTRACT**

“The Declaration on Religious Freedom” adopted by the Second Vatican Council represents a significant but limited development in the Roman Catholic Church’s embracing religious freedom. The historical position favoring union of church and state was rejected; however, the view was taken that Church teaching should operate as a constraint on the state. The contemporary position is that religious freedom should be understood as an immunity from state coercion requiring a person to act contrary to personal belief in matters of religious practice so long as public order is maintained.

However, the Church continues to favor state support for the practice of religion. Moreover, the Church has taken disciplinary action against its members who support state policies or practices violative of Church moral teaching in such areas as abortion and same-sex marriage. While embracing religious pluralism and recognizing the legitimacy of other religions, the Roman Catholic Church continues to attempt to influence state law in enactment of the Church’s official moral teaching. Such laws operate to constrain the behavior of all citizens, not merely Roman Catholics. Thus, on the subject of religious liberty understood as freedom of conscience, there is an apparent contradiction in the proclamation and practice of the Roman Catholic Church.

### **INTRODUCTION**

The issue of religious freedom is one of contemporary global concern. For example, supporters of human rights are in universal agreement that persecution of a person based on religious affiliation should be condemned. Given the presence of the Roman Catholic Church in every country either as a majority or minority religion, its teaching on religious freedom is significant not only for its members but for all civil societies where it exercises influence.

From the time of Constantine, the Roman Catholic Church developed a close relationship with civil authorities seeking to have church teaching accepted and enforced through law. As the dominance of the Roman Catholic Church was challenged by the Reformation and by the development of the modern national state, there has been in Roman Catholic teaching a slow evolutionary recognition of religious pluralism as a legal and political matter in those nations in which the Roman Catholic Church is not the state’s religion. Increasingly, with the development of democracy as the preferred form of government, the modern constitutional state, which embraces basic personal civil liberties, confronted the Roman Catholic Church with the necessity of accommodating itself to the concept of individual religious freedom.

A very significant move toward such an accommodation to individual religious freedom was taken by the Second Vatican Council in *Dignitatis Humane Personae* or the *Declaration of Religious Freedom*.<sup>1</sup> This document represents an important but limited development in the Church's embracing religious freedom. The historical position favoring union of church and state was rejected; however, the view was taken that Church teaching should operate as a constraint on the state. The position developed that religious freedom should be understood in the narrow sense of immunity from state coercion in matters of worship requiring a person to act contrary to personal belief on matters of religious practice so long as public order is maintained.

However, the Church has continued to favor state support of religion. There is also a claim that civil law, dealing with what the Church denominates as political subject matter, cannot violate the moral law and still retain legitimacy. Moreover, the Church has effectively denied liberty of conscience to its own members on matters of Church teaching. The Church has taken disciplinary action against its members who have supported state policies or practices or enactment of laws violative of Church moral teaching in such matters as birth control, abortion, euthanasia and same-sex marriage.

While embracing religious pluralism and recognizing the legitimacy of other religions, the Roman Catholic Church continues to attempt to influence state laws and to attain enactment of aspects of the Church's official moral teaching. Such laws operate to constrain the behavior of all citizens, not merely Roman Catholics. Thus, on the subject of religious freedom there is an apparent contradiction in the proclamation and practice of the Roman Catholic Church when religious liberty is understood as freedom of conscience.

At the time of the promulgation of the Declaration on Religious Freedom, its advocates recognized the limits and contradictions present in the document. As one of its principal proponents, John Courtney Murray, remarked at the time of its adoption, "It can hardly be said that the schema develops the idea [of religious freedom] satisfactorily; it does no more than suggest the line of development to be followed."<sup>2</sup> The restricted approach taken by the Declaration is

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<sup>1</sup> Council Vatican II, Declaration on Religious Freedom, *Dignitatis Humanae*, Dec. 7, 1965 [hereinafter, Declaration], [http://www.vatican.va/archive/hist\\_councils/ii\\_vatican\\_council/documents/vat-ii\\_decl\\_19651207\\_dignitatis\\_humanae\\_en.html](http://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_decl_19651207_dignitatis_humanae_en.html).

<sup>2</sup> John Cortney Murray (ed.), *Religious Liberty: An End and a Beginning* (New York: Macmillan Company, 1966) 30.

apparent in its full title: “On the right of the person and of communities to social and civil freedom in matters religious.” It is the narrow understanding of “matters religious” that gives the church’s teaching on religious freedom its narrow scope. The Declaration’s central thesis is that it is an “injustice done to the human persons (sic), and to the order laid down for men by God, if a man is denied the free exercise of religion in society.”<sup>3</sup>

The limitations of the Declaration on Religious Freedom are not simply the result of restrictions on the issues covered by the Declaration, but rather are the result of contending and conflicting views expressed in the document on a number of basic issues addressed by the Declaration. It needs to be recognized that, prior to promulgation of the Declaration, previously established church doctrine clearly denied the right of the individual person to religious freedom. While the historical position of the Church will be described later in this paper, an initial question is whether such Church doctrine as its teaching on such an issue as religious freedom can be recognized as susceptible to fundamental change, or whether there must always be the reality or at least the appearance of continuity in the Church’s teachings. The Declaration’s text reveals a clash between revisionists and traditionalists on the basic issue of whether doctrine can change, or whether at least the appearance of immutability must be maintained on such a significant matter as the Church’s teaching on the proper relation of the State to the Church. The Declaration reflects the traditionalist view that one of the principal functions of the State is to promote religion as a matter of the common good. The Declaration also includes the revisionist conflicting view that the state lacks competence on the subject of religious truths, and that any interference with the individual’s religious freedom must be limited by the need to maintain public order.

The lack of resolution of such opposing views can be observed in the Declaration’s clear endorsement of a “free exercise right,” while manifesting ambiguity on the issue of “establishment of religion.” Another important conflict which will be explored is whether the right to religious liberty is based on a theological premise of freedom of conscience or on a political concept of human dignity. One result of the failure to resolve fully this issue leads to a reading of the Declaration that recognizes the right to exercise religion free from state interference because of the basic concept of human dignity but not freedom of conscience within the Church and to some extent not to all citizens of a state whose laws are brought into compliance with the Church’s moral

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<sup>3</sup> John Klein, "Vatican II on Religious Freedom," *Cath. Law* 13 (1967) 180.

teaching enacted in pursuit of the common good. The latter is a consequence of the Declaration's failure to provide significant guidance on the role of the Church in public affairs. Concern with the maintenance of public order provides no clear constraint on the enactment of the Church's teaching on specific matters resulting in law or policies that restrict the conduct of those who in good conscience do not share the Church's view on specific social or moral teachings such as birth control, abortion or same sex marriage. The Church considers these to be political matters not only related to the maintaining of public order, but more importantly central to the realization of the public good.

This paper begins with a description or summary of the Declaration on Religious Liberty with an emphasis on those provisions which provide the basis for an expanded analysis developed in this paper. Next, an abbreviated history of the development of the Declaration is offered in order to identify some of the contending forces and views that are the source of what may be seen as ambiguity and inconsistency in the Declaration. The conflicting views that are in evidence in the Declaration will be examined in greater detail. Finally, official Church teaching on the obligation of Roman Catholic politicians and citizens to pursue enactment of laws in compliance with Roman Catholic moral understanding will be explored. These latter developments not only restrict the freedom of conscience of Roman Catholics but often restrict the freedom of all citizens.

### **A CLOSE READING OF THE DECLARATION ON RELIGIOUS LIBERTY (DIGNITATIS HUMANAE PERSONAE)**

The Declaration consists of fifteen articles divided into a *PREFACE* (Article 1) and Part I: *GENERAL PRINCIPLE of RELIGIOUS FREEDOM* (Article 2 - 8) and Part II: *RELIGIOUS FREEDOM in LIGHT of REVELATION* (Article 9 -15).

Article 1 sets out the general theoretical thesis of the Declaration. Recognition that the right to free exercise of religion in society is based on the right of the human person to be free from coercion in making religious judgments. Moreover, the state should be constrained by constitutional limitations in encroaching on the religious freedom of individuals and associations. The civil constitution should guarantee free exercise of religion. Church support for this view is said to be consistent with the traditional doctrine of the church opposing coerced religious practice, while at the same time reflecting new teaching to address the "consciousness" of contemporary man (what is called for in this and other documents issued by the Second Vatican Council, a recognition of the "the signs of the times"). The Declaration acknowledges that authentic religious

obligation requires free assent on religious matters and immunity from coercion in religious practice in civil society. Nevertheless, the claim is made that the one true religion subsists in the Catholic and Apostle Church and that the Declaration “leaves untouched traditional Catholic doctrine on the moral duty of men and societies.”<sup>4</sup> Therefore, while there is the right to be immune from coercion in religious matters in civil society, the traditional Roman Catholic doctrine of moral duty to conform to the natural law and the obligation of members of the Church to conform to its teachings, rejects any claim of freedom of conscience or right to dissent on the part of believers to depart from Church’s teaching on those matters said to be required by the natural law which is reflected in Church moral teaching.

Article 2 is the central provision of the Declaration. It establishes the right to religious freedom which is understood as an immunity from coercion from the state, or by any individual or group, requiring that a person act contrary to one’s own belief in matters of religious practice so long as public order is observed. This right is a civil right which should be recognized in constitutional law. The foundation of the right is not freedom of conscience (“not in the subjective disposition of the person”) but on the basis of human dignity (“in his very nature”).<sup>5</sup>

Reason and free will which give rise to human dignity are also the basis for religious obligation. Reason, according to the Declaration, obligates the person to search for religious truth and when that truth is known, the person is obligated to adhere to truth’s demands. Nonetheless, such adherence should not be produced by any compulsion from civil society (“men cannot discharge these obligations in a manner in keeping with their own nature unless they enjoy immunity from external coercion as well as psychological freedom”).<sup>6</sup>

Article 3 gives the arguments for religious freedom understood as free exercise. Religious freedom follows from the obligation of the person to seek the truth in religious matters. In conformity with the dignity of the human, such inquiry must be free and must involve personal assent. Exercise of religion by its nature is authentic only if it is not coerced, but rather it must be a matter of a free, internal and voluntary act.

Free exercise requires that the individual have the right to external expression and to public

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<sup>4</sup> Declaration, Article 1.

<sup>5</sup> Declaration, Article 2.

<sup>6</sup> Id.

practice of worship along with the other members of one's religious community. The civil state has a negative function in religious matters because of its limited competence; it should not command and not usually profess a religion, but it also should in no way inhibit proper religious acts. The state should, however, favor free exercise and the practice of religion since the practice of religion is in society's interest.<sup>7</sup>

Article 4 recognizes the rights of religious communities and churches to pursue their interests within the bounds of public order. Religious communities are to be allowed to worship, assist their members in matters of faith, select and regulate their ministers, engage in public teaching, and undertake cultural, educational, charitable and social activities.<sup>8</sup>

Article 5 is a brief section that recognizes the sanctity of the family and emphasizes parental control over the religious education of children.<sup>9</sup>

Article 6 and 7 are related in the sense that Article 6 addresses recognition and protection of religious liberty while Article 7 deals with the limits of religious liberty. Article 6 establishes the duty of government to protect the religious liberty of its citizens. Moreover, the obligation to recognize and protect religious freedom extends throughout society and includes protection of religious organizations. It is also the duty of government to protect the equality of all citizens and thus to prevent religious discrimination.<sup>10</sup>

At the same time, the Declaration holds that government should encourage religious practice. In fact, the Declaration goes so far as to recognize the possibility of a state-church, “[if in view of peculiar circumstances obtaining among peoples, civil recognition is given to one community in the constitutional order of society”], so long as the religious liberty of non-members is recognized and protected. Nevertheless, the Declaration condemns government imposition of any religion or the use of force to hinder anyone from leaving or joining a religious community.

Article 7 places limits on religious practice through the concept of public order which is considered a component of the general welfare or an element of the broader concept of the common good. This restricted aspect of the common good authorizes the state to limit religious freedom by

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<sup>7</sup> Declaration, Article 3.

<sup>8</sup> Declaration, Article 4.

<sup>9</sup> Declaration, Article 9.

<sup>10</sup> Declaration, Article 6.

juridical norms (or law) in order to protect the rights of citizens, assure peaceful settlement of conflicts and assure public peace. Public order, however, is a much more limited basis for state action than would be the case if pursuit of the common good could justify state action in regard to religious matters. Significantly, general norms of order and justice, as well as proper guardianship of public morality are viewed in the Declaration as aspects of the concept of public order.<sup>11</sup> There is significance in the fact that the concept of public order includes justification for intervention by the state on matters of morals; this provides a significantly broad basis for intervention by the state on such matters as sexual morality. Moreover, a distinction has been made in later Church pronouncements between matters of religious liberty and political subjects which are viewed properly as matters determined by natural law. This distinction between matters of religion and political subjects has become significant in official declarations of the teaching authority of the Church in post-Vatican II pronouncements.

Article 8 is an exhortation to personal responsibility and an appeal not to abuse religious freedom. Religious liberty should not be a pre-text to refuse to obey lawful authority. Moreover, religious liberty is not a license to violate the moral order. It is mandated that individuals are to use their judgment in the search for truth and to act with a sense of responsibility.

The second part of the Declaration address, “Religious Liberty in Light of Revelation (articles 9 -14) in Article 9 provides that the right to religious liberty which is grounded in the person’s human dignity is rooted in revelation. While it is admitted the right to be free from coercion in religious matters is not directly affirmed in Scripture, the dignity of the human person is disclosed in the traditional teachings of Christ.<sup>12</sup>

Article 10 states that Scripture and the teaching of the Church Fathers establish as a major tenet of Catholic doctrine that a person’s response to God must be free: “no one therefore is to be forced to embrace the Christian faith against his will.”<sup>13</sup> This is the fundamental teaching of the Church that supports the claim of continuity in Church teaching on the subject of religious liberty.

Article 11 seeks to establish that by teaching and practice, Christ and the apostles sought to convert, and not coerce, people to belief: “From its beginning of the Church “the disciples of

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<sup>11</sup> Declaration, Article 7.

<sup>12</sup> Declaration, Article 9.

<sup>13</sup> Declaration, Article 10.

Christ strove to convert men to faith in Christ as the Lord, not however, by the use of coercion or of device unworthy of the Gospel, but by the power, above all, of the word of God.”<sup>14</sup>

Article 12 is a claim that the Declaration is consistent with the traditional teachings of the Church. At the same time, there is a suggestion that the Declaration represents a development in doctrine in face of greater contemporary understanding of human dignity. Moreover, there is an admission that in the past there have been failures in the Church’s protection of religious freedom: “There has at times appeared a way of acting [by the Church] hardly in accordance with the spirit of the Gospel or even opposed to it. Nevertheless, [the Declaration maintains] the doctrine of the Church that no one is to be coerced into faith has always stood firm.”<sup>15</sup> This emphasis on the right of freedom of conscience – by the Church itself – reveals the underlying tension reflecting support of this concept by revisionists and the rejection of what is considered a claim to radical freedom of conscience by traditionalists who emphasize obligation to comply with the mandates of natural law.

Article 13 lays claim to the Church’s own freedom in providing for the care and salvation of its members. As with the claim of individuals, the Church claims freedom as a society of individuals to live in civil society according to Christian teachings. The Christian faithful, in common with all other persons, possesses the civil right not to be hindered in leading their lives in accordance with their consciences.<sup>16</sup>

This contradictory view on freedom of conscience is evident in Article 14 which states that it is the fundamental duty of the Church to advocate for religious freedom which follows from its duty to teach the truth and to proclaim “by her authority those principles of the moral order which have their origins in human nature itself.”<sup>17</sup> The underlying contradiction involves recognition of the subjective freedom of conscience while asserting obligation to comply with the objective mandates of natural law. The conflict is supposedly resolved by the concept of the “well-formed conscience” which requires the employment of reason to determine moral obligation. According to the doctrine of the “well-formed conscience,” reason properly employed will bring the conscience into realization and acceptance of the mandates of natural law.

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<sup>14</sup> Declaration, Article 11.

<sup>15</sup> Declaration, Article 12.

<sup>16</sup> Declaration, Article 13.

<sup>17</sup> Declaration, Article 14.

Article 15 invoking “the signs of the times” recognizes that in the current historical context the Declaration of Religious Freedom confirms the aspirations of contemporary humankind. The Declaration is an endorsement of the recognition of religious freedom as a civil right that is included in state constitutions and recognized in international documents. Nevertheless, the Declaration also recognizes that not all contemporary governments protect this right to religious liberty, but instead deter citizens from the profession of faith or burden the exercise of religion. The Declaration concludes by calling everyone to recognize that: “it is necessary that religious freedom be everywhere provided with an effective constitutional guarantee and that respect be shown for the high duty and right of man freely to lead his religious life in society.”<sup>18</sup>

### **DEVELOPMENT OF THE DECLARATION**

The initial agenda for the second Vatican Council did not include the drafting of a separate document on religious liberty. However, there was anticipation by of those involved in planning the program of the Council that the issue of religious freedom would arise in the context of the discussion on ecumenism. In fact, the first two drafts of what would eventually become the Declaration on Religious Freedom were parts of preliminary drafts of the Decree on Ecumenism.<sup>19</sup> The first draft prepared by the Secretariat for the Promotion of Christian Unity was chapter five of the proposed document on ecumenism.<sup>20</sup>

John Coleman, writing in the *U.S. Catholic Historian*, concluded that the Declaration on Religious Liberty was the most controversial document produced by the Council judged by the number of drafts and revisions.<sup>21</sup> During the two sessions in which the Declaration was formally discussed, there were 600 written interventions, 120 public speeches, and 2000 amendments.<sup>22</sup> Significantly, there were calculated efforts to prevent a vote on the document, several consultations between sessions and more papal interventions by Pope Paul VI than in the case of any other document.

The relevance of the subject of religious liberty to those concerned with ecumenism was made clear by the spokesman for the secretariat, Bishop Emile De Smedt, when he first introduced

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<sup>18</sup> Declaration, Article 15.

<sup>19</sup> John Coleman, "The Achievement of Religious Freedom," *U.S. Catholic Historian* 24 (2006), 26-27.

<sup>20</sup> Herbert Vogimlér (ed.), *Commentary on the Documents of Vatican II* (Volume IV) (New York: Herder and Herder, 1969), 51-52.

<sup>21</sup> Coleman, *supra* note 19 at 26.

<sup>22</sup> *Id.*

the subject of religious freedom in a separate document to the Council on November 19, 1963; Bishop De Smedt said that: “Many non-Catholics harbor an aversion against the Church or at least suspect it of a kind of Machiavellianism, because we seem to them to demand free exercise of religion when Catholics are a minority in any nation and at the same time refuse and deny the same religious freedom when Catholics are in majority.”<sup>23</sup> This criticism by non-Catholics was well founded as revealed in the earlier Church teaching on Church-State relations which is described later in this paper.

The early discussion of religious liberty was focused on the needs of ecumenism rather than on a theory of rights. Thus, the tone of the discussion can be characterized as one of religious toleration rather than one recognizing a right to religious freedom or religious liberty. John Courtney Murray retrospectively observed that the decision in April 1964 to create a separate document on religious freedom moved the discussion from a preoccupation with ecumenical relationships and issues of conscience and toleration to a natural rights discussion of religious freedom with its foundation in the dignity of the human person.<sup>24</sup>

Murray characterized the initial text as attempting to develop a declaration of a theory of “freedom of conscience.”<sup>25</sup> This approach cast the issue as one of the moral values to be practiced in interpersonal religious relations between Catholics and non-Catholics. According to Murray, the early document directed at ecumenical dialogue equated religious freedom with freedom of conscience which was theologically grounded on the role of conscience in all matters of faith. The early draft expounded on the subject of conscience: “The human person, endowed with the capacity for conscious and free action, can fulfill the will of God only inasmuch as the divine law is apprehended through the mediation of the dictates of conscience. Hence, the person can attain his ultimate end only by forming judgments of conscience and by faithfully following their dictates. Hence the man who sincerely obeys his conscience has the intention of obeying God Himself. And he is worthy of respect.”<sup>26</sup> This view of conscience led to the conclusion that the Church should respect those who “follow the dictates of their own conscience, even when, after

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<sup>23</sup> "Bishop de Smedt's Report on Religious Liberty," in Thomas Stransky, *Declaration on Religious Freedom of Vatican Council II* (New York: Paulist Press, 1966) 93-94.

<sup>24</sup> Murray, *supra* note 2 at 27.

<sup>25</sup> *Id.* at 16.

<sup>26</sup> *Id.* at 18.

severe and adequate investigation, it errs in good faith.”<sup>27</sup> Ultimately, the argument was for religious toleration based on good intentional exercise of conscience on matters of religious belief.

The traditionalist criticism of the formulation of the concept of religious freedom as set out in the early drafts was largely based on objections to the theological foundation being argued as the basis for toleration and the related right of religious liberty, namely subjective freedom of conscience. Traditionalists made serious objection to the chapter on religious liberty as part of the document of ecumenism. Traditionalists equated freedom of conscience with subjectivism and failure to comply with the objective mandates of natural law. Traditionalists at the Council argued that there is a need to: “Emphasize the objective truth of the divine law with all its requirements, in order to exclude any danger of subjectionism or indifferentism.”<sup>28</sup> A common objection took the form an argument that the document should be titled “Relations between Church and State and Religious Tolerance” rather than “Religious Liberty” based on a notion of personal right because error does not have any rights.<sup>29</sup> However, when Bishop De Smedt introduced the topic of religious liberty, he emphasized that the freedom in question did not amount to indifferentism or laicism or doctrinal relativism.<sup>30</sup> Bishop De Smedt was arguing that freedom of conscience was not mere subjectivism; however, the traditionalists continued opposing acceptance of freedom of conscience in any significant manner as the subject for consideration when considering the matter of religious freedom or religious liberty.

The first draft on religious freedom was presented as chapter 5 of the schema on ecumenism.<sup>31</sup> The second version appeared as an appendix to the schema on ecumenism labeled “Declaration No. 12 and was titled: “On Religious Freedom: On the Rights of Persons and Community to Freedom in Religious Matters.”<sup>32</sup> The third draft was presented as a separate document with the same title as the second version.<sup>33</sup> However, the text appeared in a new form which was distributed to the Council on November 17, 1964.<sup>34</sup>

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<sup>27</sup> Id. at 17.

<sup>28</sup> Guiseppe, Alberigo and Joseph Kamonchak (eds.), *History of Vatican II (Volume III): The Mature Council. Second Period and Intercession. September 1963 – September 1964* (Maryknoll, New York: Orbis Books, 2000) 382

<sup>29</sup> Id. at 276

<sup>30</sup> Stransky, supra note 23 at 94-95

<sup>31</sup> Vorgrimler, supra note 20 at 51.

<sup>32</sup> Id. at 51-52

<sup>33</sup> Id. at 52-55.

<sup>34</sup> Id. at 53.

The maneuverings among those opposed to promulgating a document on religious liberty can be observed in the procedural interplay which occurred in reaction to the Secretary General of the Council scheduling a vote on the Declaration on November 19, 1964.<sup>35</sup> A number of traditionalist bishops asked that time be allowed for a closer reading of the text by delaying the vote in accordance with Article 30. Par 2. of the Council's Procedural Regulation. At the 126th General Congregation, on November 19, the council was notified of a delay in voting.<sup>36</sup> However, the third schema or version was nevertheless presented to the Council at that time by Bishop De Smedt, but no vote was taken.<sup>37</sup> Immediately, a petition by revisionists was presented to the Pope signed by 441 members of the Council asking for an intervention to accelerate the vote. The Pope ordered the Administrative Tribunal to examine the issue of the scheduled vote, however, the Tribunal confirmed the decision to delay the vote.<sup>38</sup> The Third session of the Council ended without a vote on the third version of the Declaration on Religious Liberty. A fourth version was drafted taking into account the suggestions and comments received by the Secretariat for Promoting Christian Unity and was presented to the Fourth and final session of the Council.<sup>39</sup>

With the third version as an independent document, which was largely continued in the fifth or final version, there was a fundamental change in the foundation of the document from a theological basis in freedom of conscience to a political (and natural law) basis focused on human dignity. Moreover, there is a special claim to religious liberty by the Catholic Church itself based on the Church's possession of truth rooted in its understanding and promulgation of the natural law. Finally, the new document recognizes that religious liberty is not a license releasing human beings from their obligation to seek and obey real truth. This was read by traditionalists as an exhortation to seek a well-formed conscience recognizing the moral mandates of the natural law.

Religious liberty was understood in these later drafts to include a range of freedoms including rights to worship, education and social service. The limits of religious liberty are set by

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<sup>35</sup> Giuseppe Alberigo and Joseph Komonchak (eds.) *History of Vatican II (Volume IV): Church and Communion. Third Period and Intercession. September 1965* (Maryknoll, New York: Orbis Books, 2003) 402

<sup>36</sup> *Id.* at 398-399.

<sup>37</sup> *Id.* at 401-402.

<sup>38</sup> *Id.* at 402.

<sup>39</sup> Giuseppe Alberigo and Joseph Komonchak (eds.), *History of Vatican II (Volume V): The Council and the Transition. The Fourth Period and the End of the Council. September 1965—December 1965* (Maryknoll, New York: Orbis Books, 2006) 65.

the need for “a public order” rather than the “common good,” the latter was seen as providing too broad or on an expansive basis for state interference with religious freedom. Pursuit of the “common good provides a broad basis for invoking the insights of moral theology as a basis for state policy. Maintenance of public order, however, provides a much narrower basis for use of state power to protect the functions of civil authority. An emphasis was placed on the objective political nature of the right as freedom from state coercion to avoid possible recognition of any claim to subjective conscience or support of indifferentism which some participating traditionalist bishops saw as implicit in the claim to recognition of freedom of conscience.

The fourth version of the text placed additional emphasis on the juridical character and civil liberty nature of the right to religious freedom by underscoring that it is a “civil right.” There is a recognition that the government has a duty to safeguard the right of religious freedom. The individual has a personal civil right to religious liberty. Thus, there must be constitutional limits on the power of government to constrain religious practice. The essence of the right to religious freedom is established as the right to be free from coercion by the state in strictly religious matters. This can be characterized in constitutional terms as the right to free exercise of religion.

The final version of the Declaration, a fifth schema incorporating final suggestions and amendments, was debated for four and a half days. On December 7, 1965, Pope Paul VI promulgated the Declaration on Religious Freedom, after a vote was taken when 2308 positive votes, 70 negative votes, and eight votes found invalid.<sup>40</sup>

### **TRADITIONAL (CLASSICAL) VS. REVISIONIST (HISTORICAL/CONTEXTUAL “SIGNS OF THE TIMES”)**

The Roman Catholic traditionalist view of religious freedom grew out of the church’s confrontation with nineteenth century revolutions in the political, scientific, religious and ideological realms. The church developed a theological view that rejected religious liberty as a threat to truth and social order, as well as a threat to the Church itself. The development of the Church’s doctrine opposing religious liberty can be traced through a series of papal encyclicals. In 1832, Pope Gregory XVI linked freedom of conscience to what he called “indifferentism” in his encyclical *Mirari Vos*, Gregory XVI wrote: “[One of] the deplorable evils affecting the Church today [is] indifferentism, that is the fatal opinion spread abroad by the deceit of wicked men...

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<sup>40</sup> Vorgimler, supra note 20 at 65

From this poisonous spring of indifferentism flow the false and absurd, or rather the mad principle, that we must secure and guarantee to each the liberty of conscience; this is the most contagious of errors.”<sup>41</sup>

In his condemnation of liberalism as the anti-religious error of the nineteenth century, Pope Pius IX condemned free exercise of religion and claimed the Catholic Church should be recognized as the one true church. In 1864, Pius IX appended the Syllabus of Errors to his encyclical *Quarta Cura*.<sup>42</sup> Error Number 15 condemned subjective freedom of conscience; the Pope declared it is error to believe: that “[e]very man is free to embrace and profess that religion which he, led by the light of reason, thinks to be the true religion.”<sup>43</sup> Error 77 held that the Roman Catholic Church has the rightful claim to be recognized as the state religion. The Pope cited as erroneous the view that “In this age of ours it is no longer expedient that the Catholic religion should be the only religion of the state, to the exclusion of all other cults whatsoever.”<sup>44</sup>

The Roman Catholic Church was the one true church that offered salvation and it should be established as the official religion by the state

It can now be seen how very notable it is that the Second Vatican Council embraced the concept of religious liberty and abandoned the mandate of establishment of Catholicism as the state religion. However, in the development of the Declaration, great effort was made to avoid charges of indifferentism and subjective freedom of conscience that was the specific concern to the earlier popes. This tension was reflected in the previously described decision not to base the right to religious freedom on a theological view of freedom of conscience, but instead to derive the right to religious freedom from the political and philosophical concept of human dignity, and choosing to characterize religious freedom as a political and civil right.

Although Pope Leo XIII had continued to maintain a view supportive of the unity of Church and State, he nevertheless, gave significant recognition from a theological perspective to what he termed the God-given gift of liberty of the human person. In his 1888 encyclical *Libertas in Christi Carta* Pope Leo XIII declared: “Liberty, the highest of natural endowments being the

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<sup>41</sup> Pope Gregory XVI, *Mirari Vos* quoted in John Klein, "Vatican II on Religious Freedom" *Cath. Law* 13(1967) 183- 184.

<sup>42</sup> Pope Pius IX, *Quarta Cura* with appended *Syllabus of Errors*. quoted in Klein, supra note 41 at 184

<sup>43</sup> Id. [Error no. 15].

<sup>44</sup> Id. [Error no. 77].

portion only of intellectual or rational natures confers on man this dignity - that he is 'in the hand of his counsel' and has power of his actions. . . Man, indeed, is free to obey his reason, to seek moral good, and to strive unswervingly after his own end."<sup>45</sup> While recognizing the significance of liberty for the dignity of man, Leo XIII, nevertheless, took a restricted view of the relation of human liberty to matters of religious belief and practice. There was to be no dissent within the Church.

Leo XIII's view of the relation of Church and State was based on four principles: (1) the spiritual order is superior to the temporal, (2) the Catholic Church should be protected by the State, (3) there should be a harmonious relationship between the Church and State, and (4) there should be a "public profession" of religion by the government.<sup>46</sup> In his encyclical *Immortale Dei* (1885), Leo XIII based his view of the obligation of the State to make a public profession of religion on natural law principles: "[T]he State, constituted as it is, is clearly made to act up to the manifold and weighted duties linking it to God, by the public profession of Religion. Nature and reason... command every individual devoutly to his holiness.... men living together in society are under the power of God no less than individuals are, and society, no less than individuals."<sup>47</sup> Thus, according to Leo XIII, the State was bound to make a public profession of faith; and because the state is bound to recognize truth the state is required to declare the Catholic Church, the one true faith, to be the official religion of the state.

Alternative concerns of Leo XIII were that the State not deny religious practice to Catholics, but also that it not adopt a non-true religion: "[I]t is a public crime to act as though there were no God. So, too, is it a sin for the State not to have care for religion as a something beyond its scope or as of no practical benefit; or out of many forms of religion to adopt one which chimes in with the fancy."<sup>48</sup> Unlike the Vatican II Declaration, Leo XIII recognized the competence of the State to make religious judgments. In fact, he saw such judgments ultimately to be the obligation of the State.

To some extent many of the views of Leo XIII can be seen as having continuing influence

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<sup>45</sup> Pope Leo XIII, *libertas* in Claudia Carlen, *The Papal Encyclicals: 1878 - 1903* (New York: McGrath Publishing Co., 1981) 169.

<sup>46</sup> Jo Renee Formicola, "American Catholic Political Theory," *J. Church & State* 29 (1957) 458.

<sup>47</sup> Pope Leo XIII, *Immortale Dei* in Carlen, *supra* note 45 at 108

<sup>48</sup> *Id.* at 109.

on the traditionalists who actively determined the text of the Declaration on Religious Liberty. While the Declaration does not require the State to make a public expression of religion, it does demand that the State evidence a positive view of religion and that the state act to support and foster religion: “[G]overnment is to assume the safeguard of the religious freedom of all its citizens . . . Government is also to help create conditions favorable to the fostering of religious life.”<sup>49</sup>

While recognizing that many states no longer had an established church and that the modern world embraces religious pluralism, in *Immortale Dei*, Leo XIII expressed a hope of a return to Christian unity and he expressed a nostalgia for the union of Church and State that existed in most of Europe before the sixteenth century: “There was once a time when states were governed by the philosophy of the Gospel ... Church and State were happily united in concord and friendly interchange of good office.”<sup>50</sup> While, the Declaration on Religious Liberty does not reject the possibility of union of Church and State, the Declaration does not provide an affirmation for or make any claim to such union as a matter of right or the manifestation of Divine will. Moreover, the Declaration requires that if there is an established State Church, all citizens are to be guaranteed religious liberty and not coerced into submitting to the State Church. Article 6 provides: “If, in view of peculiar circumstances obtaining among peoples, special recognition is given to one religious community, in the constitutional order of society, it is at the same time imperative that the right of all citizens and religious communities to religious freedom should be recognized and made effective in practice.”<sup>51</sup>

It is important to recognize that the traditional Catholic view of the State went beyond the idea that the State must express general support for religion, the State was expected to make a public profession of religion and preferably recognize the Roman Catholic Church as the official religion of the state. Support for this view was expressed even by John Courtney Murray in one of his early articles in *Theological Studies*; Murray affirmed that: “The State has the obligation to acknowledge God as its author, to worship Him as he wills to be worshipped, and to subject its official life and action to His law.”<sup>52</sup> This teaching formed the basis of the nineteenth century thesis which was presented in the manual of theology as *Jus Publicum Ecclesiasticum*.<sup>53</sup> This proposition

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<sup>49</sup> Declaration, Article 6

<sup>50</sup> *Immortale Dei*.supra note 47 at 112.

<sup>51</sup> Declaration, Article 6.

<sup>52</sup> John Courtney Murray, "Freedom of Religion" *Theological Studies* 6 (1945) 266.

<sup>53</sup> George Shea, "Catholic Doctrine and 'The Religion of the State'" *American Ecclesiastical Review* 123

along with the historical reality of religiously pluralistic states gave rise to the *Thesis/Hypothesis* doctrine that dominated Catholic Church teaching on the relation of Church and State until Vatican Council II.<sup>54</sup> The *Thesis* is that the ideal situation is that the Catholic Church, the only true church, is properly established as a State Church, and other churches have no right since error has no right. The *Hypothesis* holds that in religiously pluralistic societies without an established Catholic State Church, there is to be tolerance of other religions even though they exist in error, and Catholicism is to be guaranteed its freedom among other religions. However, if Catholicism should become the majority religion and gains the power to establish itself as the State Church, other religions may be suppressed. The logic of the traditional doctrine was quite simple, if the state is obligated to profess and promote religion, and if there is only one true religion, it is the obligation of the State to promote the one true religion: “Because no individual or state is justified in supporting error or according error the same recognition as truth, for once the true church – The Catholic Church – is recognized, the other churches that exist in error should be suppressed.”<sup>55</sup>

The clear change in Church teaching in the Declaration while acknowledging the possibility and appropriateness of a State Church, requires that if such an institutional arrangement is established, dissenting churches should not be suppressed. The Declaration developed a compromise position requiring that the State support the general practice of religion without requiring a public declaration in favor of religious belief as anticipated by Leo XIII’s declaration that the state had an obligation to make a public expression of religion. The Declaration explicitly rejects the idea that the State has an obligation to make a public profession of a particular religion. Furthermore, although there may be a State Church, citizens may not be compelled to join it. If the State is not required to make a public expression of religion, it need not choose between the one true religion and other churches which arguably live in error. Without the requirement of the endorsement of the Catholic Church as the true church or establishment of a State Church, the Declaration clearly rejects the claim that toleration is restricted to situations where the Catholic Church is not the State Church. Religious freedom is to be guaranteed to all without regard to existence or not of a State Church. The clash between truth (The Catholic Church) and error (other

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(1950) 161.

<sup>54</sup> Stephen Bevans and Jeffery Gos, *Evangelization and Religious Freedom* (New York: Paulist Press, 2009) 158.

<sup>55</sup> Thomas Love, “Contemporary Conservative Roman Catholic Church-State Thoughts,” *J. Church & St* 7 (1965)23

churches) is overcome by eliminating the obligation of the State to make a public profession of faith. The thesis/hypothesis dichotomy is overcome by elimination of the possibility of the state establishing an official church to which it requires its citizens to submit or accept membership.

### **CONTINUITY VERSUS CHANGE IN CHURCH DOCTRINE**

The Declaration on Religious Liberty emerges from the tension between the principle that church dogma is not subject to change and the apparent rejection of earlier papal pronouncements of the proper relation of church and state. This requires a reconciliation between traditional condemnation of religious freedom, as made by Pope Gregory XV and Pope Pius IX, and the embracing of the concept of religious freedom. In Article 12 of the Declaration on Religious Liberty, there is an oblique claim to the immutability of Church doctrine: “Throughout the ages the Church has kept safe and handed on the doctrine received from The Master and from the Apostles.”<sup>56</sup> This may involve an implicit recognition that the earlier papal condemnations of religious liberty were not based on Scripture or traditional teaching of the Church. Moreover, there is explicit recognition that the historical occurrences in which the Church was involved in the suppression of religious freedom, such as the Inquisition, and forced conversion of indigenous peoples which are explained as failures to adhere to the true doctrine of the Church: “[T]here has at times appeared a way of acting that way hardly in accord with the spirit of the Gospel or even opposed to it. Nevertheless, the doctrine of the Church that no one is to be coerced into faith has always stood firm.”<sup>57</sup> The Declaration denounces coercion in matters of belief “all men are to be immune from coercion... no one is to be forced to act in a manner contrary to his own beliefs.”<sup>58</sup> Moreover, the Declaration explicitly deals with the right to religious freedom. The right to religious freedom is not only the right to be free from “coercion” but also extends to the individual the right of free exercise and the right to practice one’s religion: “Nor, on the other hand, is he to be restrained from acting in accordance with his conscience, especially in matters religious.”<sup>59</sup>

The issue remains how one is to reconcile the view of the Declaration in Article 2 recognizing religious freedom with Pius X’s condemnation of free exercise when he denounced as error any claim that individuals “be allowed to have public exercise of any form of worship on

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<sup>56</sup> Declaration, Article 12

<sup>57</sup> Id.

<sup>58</sup> Id.

<sup>59</sup> Id.

their own.”<sup>60</sup> Such a reconciliation of past declarations and present proclamations arises in face of the assertion that nothing in the Declaration of Religious Freedom changes anything in the Church’s teaching: “[I]t leaves untouched Catholic doctrine on the moral duty of men and societies toward the true religion and towards the one Church of Christ.”<sup>61</sup> This apparent contradiction is resolved by the methodological device cited in Article 15, namely consideration of the “signs of the times.”<sup>62</sup> The implicit argument is that the popes in the nineteenth century were confronted with secular movements such as anti-clericalism and religious disestablishment that threatened the existence of the Church. The doctrinal statements of these earlier popes must be viewed in the context of an imperiled church. For example, in his encyclical *Human Genus in Carlen* (1884), Leo XIII addressed the positive relation between Church and State as a defense from what was perceived as threats to the Church from Freemasonry.<sup>63</sup> The revisionist methodological device is to invoke the relevance of the historical and social context (“the signs of the times”) in which one addresses a question like religious liberty. The contextual approach of the Declaration is reflected in its opening statement: “A sense of dignity of the human person has been impressing itself more and more deeply on the consciousness of contemporary man.”<sup>64</sup> There is a clear manifestation of the tension between continuity and change in the last sentence of the first paragraph of the Declaration when it is stated that the Council “searches into the sacred tradition and doctrine of the Church - the treasury out of which the Church continually brings forth new things that are in harmony with the things that are old.”<sup>65</sup> The concept of doctrinal evolution and contextual development may offer a plausible account for what seems to be a repudiation of traditional Church’s teaching. However, there is a possible explanation for the steadfast refusal to make a more direct admission that the Declaration represents a dramatic change in the Church’s teaching on religious freedom. Such an admission would open other areas of doctrine to challenge, particularly the Church’s teaching on moral issues including those dealing with sexual matter such as contraception, abortion, and same-sex marriage, particularly since these matters were already in contention at the time of the Council.

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<sup>60</sup> Pope Pius IX, supra note 42 at 184 Error no. 78J compare, Declaration, Article 1.

<sup>61</sup> Declaration Article 1

<sup>62</sup> Declaration Article 15

<sup>63</sup> Pope Leo XIII, *Human Genus in Carlen*, supra note 45 at 91-101.

<sup>64</sup> Declaration, Article 1

<sup>65</sup> Id.

### THE PLACE OF CONSCIENCE

The Declaration reveals a tension over the place of conscience in religious matters. In Article 3 there is the assertion that a person is not “to be restrained from acting in accordance with his conscience, especially in “religious matters.”<sup>66</sup> Yet the right to religious freedom is not viewed as freedom of conscience: “[T]he right to religious freedom has its foundation not in the subjective disposition of the person, but in his very nature.”<sup>67</sup> By establishing the basis of religious freedom in human dignity, and categorizing it as a civil right, the Declaration confines religious liberty to the civil realm and implicitly excludes it from matters of belief within the Church itself. The explanation for this dichotomy lies in the current teaching of the Church on the well-formed conscience which denies any role for the subjective judgment, but instead endorses an understanding of freedom of conscience as a process of discernment that requires one to act in conformity with objective truth: “[E]very man has the duty, and therefore the right [freedom], to seek the truth in matter religious,” so that he “may with prudence” bring himself into conformity with objective truth and act with conformity to “true judgments of conscience.”<sup>68</sup> True judgments of conscience are held to be those that base action on discernment of objective truth. This is the same doctrine of objective truth that was behind the nineteenth century ideas of the obligation of the State to recognize the true church and suppress other churches rooted in error. This is the same concept of objective truth that lie behind former teaching of the Church on the responsibility of the State to deny exercise of religious liberty that implicated adherence to error. The implicit claim is that there is no subjective freedom of conscience that would allow one to act in error by disregarding truth as revealed by the natural law which is embodied in Church doctrine. It is this view that the Declaration implicitly endorses when it is suggested that the freedom of conscience that the Church recognizes requires its members to accept the truth espoused in Church doctrine. Ultimately the Declaration on Religious Liberty treats dissent in the Church as beyond its scope by limiting its discussion of religious liberty to free exercise as a civil right required by recognition of human dignity rather than being a matter of freedom of conscience.

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<sup>66</sup> Declaration, Article 3

<sup>67</sup> Declaration, Article 2

<sup>68</sup> Declaration, Article 3

### FREE EXERCISE VERSUS ESTABLISHMENT

A significant tension reflected in the Declaration is the endorsement of *free exercise of religion* [in Article 1] while not addressing fully the issue of *establishment of religion*. There was, of course, no intention by the Council to incorporate the U.S. Constitutional theory into its Declaration on Religious Liberty. Nevertheless, these two subjects which form the constitutional theory of Church-State in United States Constitution provided in the First Amendment asserting that: “Congress shall make no law respecting of establishment of religion, or prohibiting the free exercise thereof,” are both elements of religious liberty addressed in the Declaration.<sup>69</sup> This reflects the significant influence of the American theologian John Courtney Murray on the content of the Declaration on Religious Liberty. The Declaration supports free exercise in protecting the individual both from being coerced into a religious practice and from being prevented from engaging in religious practice so long as religious practice does not violate public order. Such a possibility may occur; for example, if a religion required human sacrifice, it would be clearly in violation of state law condemning murder. More controversial cases involve religions which incorporate use of controlled substances into religious rituals.

The Declaration, however, does not view the establishment of religion as necessarily contrary to religious freedom. In Article 6 it even anticipates the possible establishment of a State Church: “If, in view of peculiar circumstance obtaining among peoples, special civil recognition is [can be] given to one religious community in the constitutional order of society.”<sup>70</sup> Moreover, the Declaration approves State support of religion to the extent that the State is required to see that conditions favor religious practice which under United States Constitutional analysis would constitute such entanglement that it would amount to prohibited establishment of religion. Specifically, Article 6 declares that: “Government is also to help create conditions favorable to the fostering of religious life.”<sup>71</sup> The Declaration seems ultimately to take a compromise position on the issue of religious neutrality. In relation to the subject of establishment of religion the Declaration requires neutral or equal treatment of religions on the issue of free exercise. It does not require neutrality on the matter of religion generally, or on the establishment of a state religion; in fact, it approves general state support of religion. The Declaration is more ambiguous on the

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<sup>69</sup> U.S. Constitution, Amend. I

<sup>70</sup> Declaration, Article 6

<sup>71</sup> Id.

subject of support for one religion over another since it anticipates the possibility of a State Church in an environment where other religions exist and suggests that other religions not be in anyway restricted or unduly burdened.

### **RELIGIOUS PRACTICE VERSUS POLITICAL SUBJECTS AND MORAL PRINCIPLES AS THE BASIS FOR LAW**

Finally, there is a possible tension in the Declaration between the doctrine of religious liberty and the prohibition of coercion in matters of religious belief, and what the Magisterium of the Church views as political subjects which are to be determined by adherence to the natural law. Those not adhering to the view of the Magisterium may view these subjects as implicating religious belief and property subject to freedom of conscience. Tension naturally arises because of the Church's teaching on the objective nature of moral truths based on natural law. The Declaration is clear in its recognition of freedom of conscience in matters of what it dominates to be religious practice and related belief: "[M]an perceives and acknowledges the imperatives of the divine law through the mediation of his conscience."<sup>72</sup> Equally clear is the recognition that the religious truth must be the basis of its own authority: "The truth cannot impose itself except by virtue of its own truth."<sup>73</sup> While coercion is excluded, the Declaration recognizes the right of the Church to teach about religious truth including morals: "Religious communities also have the right not to be hindered in their public teaching."<sup>74</sup> A tension arises over the teaching of morals because of the Church's view that when it teaches morals, it teaches objective truth rooted in the natural law which is binding on all persons at all times and thus may require the assent of all citizens. Thus, recognition of the Church's right to teach about moral involves recognition of the Church's ability to teach about objective moral truths: "For the Church is, by the will of Christ, the teacher of the truth. It is her duty to give utterance to, and authoritatively to teach, that truth which is Christ Himself, and also to declare and confirm by her authority those principles of the moral order which have their origins in human nature itself."<sup>75</sup> The problem arises out of the Church's understanding of its role in teaching moral truth which extends to the obligation of the State to incorporate such teaching of moral truth into law. This brings into contention the limited notion of public order which constrains religious freedom against the broader concept of the common good which entails

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<sup>72</sup> Declaration, Article 3

<sup>73</sup> Declaration, Article 1

<sup>74</sup> Declaration, Article 4

<sup>75</sup> Declaration, Article 14

recognition and enforcement of moral precepts. The Declaration confines State action limiting religious liberty to concern with public order.

However, the Church's view of its teaching the truth about morality leads to the identification of absolute moral norms which must be enforced in the name of the common good. Perhaps one way this apparent conflict about religious freedom can be understood is that religious liberty is restricted to belief and free exercise with conventional understanding of religious practice as associated with worship, and its attendant activities. This narrow view of religion can be seen as not including matters that are political subjects or public policy which is subject to absolute or objective moral norms, which are the subject of the Church's teaching and beyond the scope of the protection of religious freedom understood as free exercise. There is of course a contradiction in the Church's claim of right to engage in such moral teaching as a matter of its own religious freedom. Moreover, the person who is not a member of the Catholic Church may find his or her religious freedom broadly understood as including exercise of conscience on such matters as procreation and abortion as constrained by the Church's action influencing the State to enact the Church's teaching on moral principles into law (for example, law forbidding same sex marriage); such a person may feel that his or her own religious freedom has been abridged (when the person is affiliated with a religious group or sect that sanctifies same sex marriage as do the Episcopal and Congregational churches.)

The position of narrowly constructing the matter subject to religious freedom to matters of

“specifically religious activities (such as profession of faith, worship, administration of sacraments, interchange between religious authorities)” was taken by then Cardinal Joseph Ratzinger (later Pope Benedict XVI) in the post-Vatican II document issued by the Congregation for the Doctrine of Faith entitled “Doctrinal Note on Some Questions Regarding the Participation of Catholics in Political Life.”<sup>76</sup>

The Doctrinal Note acknowledges the recognition of religious freedom in *Dignitatis Humanae Personae* but stresses it is “based on the ontological dignity of the human person and not on a non-existent equality among religions or cultural systems of human creation.”<sup>77</sup> The Doctrinal Note finds its claim of the obligation of Catholic politicians, and citizens, to vote and

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<sup>76</sup> Congregation for the Doctrine of the Faith, “Doctrinal Note on some questions regarding the Participation of Catholics in Political Life” (November 24, 2002).

<http://www.vatican.va/curia/congregations/cfaith/documents/no.6>.

<sup>77</sup> Id. No. 8.

to act in support of the Church's moral teaching on the claim "that a well-formed Christian conscience does not permit one to vote for a political program or an individual law which contradicts the fundamental contents of faith and morals."<sup>78</sup> A distinction is made between what may properly be considered a matter of religious liberty and those political matters which require adherence to the natural law (as understood by the Magisterium of the Roman Catholic Church).

As a practical matter, the Doctrinal Note maintains "there can generally be a plurality of political parties and a variety of legislative proposals upon which Catholic politicians and citizens may choose to vote as a matter of individual decision or choice."<sup>79</sup> These are matters which are not concerned with natural law principles. Rather these are regulatory or purely social subjects on which rational persons may differ. However, those political subjects which involve matters of moral truth on which the Church teaches require acceptance by Catholic citizens and politicians, these are subjects for legislation or judicial resolution that involve objective truth based on moral principles rooted in Church understanding of natural law where there can be no deviation. The Doctrinal Note characterizes any deviation from Church teaching on objective moral truth as an expression of relativism which must be condemned as relativistic political freedom and not authentic religious liberty. This constrained understanding of religious liberty does not incorporate those political subjects which implicate natural law principles. Accordingly: "Political freedom is not – and cannot be – based upon the relativistic idea that all conceptions of the human person's good have the same value and truth, but rather, on the fact that politics are concerned with very concrete realizations of the true human and social good in given historical, geographic, economic, technological and cultural contexts."<sup>80</sup>

The Doctrinal Note acknowledges that the Church does not maintain that it offers moral judgment on every temporal matter that may have an underlying moral substance. Moreover, there is an acknowledgement of respect for the individual judgment of every person that makes the democratic process possible. "As the Second Vatican Council teaches, the protection of the rights of the person is indeed a necessary condition for citizens, individually and collectively, to play an active part in public life and administration."<sup>81</sup>

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<sup>78</sup> Id. No. 4.

<sup>79</sup> Id. No. 3.

<sup>80</sup> Id.

<sup>81</sup> Id. citing Second Vatican Council, Pastoral Constitution, *Gaudium et spes*, No. 73

Nevertheless, where the Church asserts there exists a controlling force of natural law, there is an obligation of Catholic politicians and citizens to support the natural law principle: “[T]hose who are directly involved in lawmaking bodies have a grave and clear obligation to oppose any law that attacks human life. For them, as for every Catholic, it is impossible to promote such laws or to vote for them.”<sup>82</sup> The argument is nuanced in order to avoid a direct conflict with religious freedom by adopting the view that values the exercise a freedom of conscience by asserting true autonomy [involving the well-formed conscience] is based on adherence to natural law (not simply to a matter of church or “religious” teaching but based on a person’s proper use of reason to discern the requirements of natural law: “[s]uch autonomy refers first of all to the attitude of the person who respects the truths that derive from natural knowledge regarding man’s life in society, even if such truths may also be taught by a specific religion.”<sup>83</sup> Moreover, there is a distinction between the requirement of assent rather than acceptance in conscience. The argument is that the obligation for adherence to Church teaching is not that it is the teaching of the Church but that it is the requirement of natural law discerned through the proper use of reason. According to the Magisterium, the teaching authority of the Church, it is the requirements the natural law regarding the understanding of human life and the attendant responsibility to protect human life that results in the obligation of faithful Catholics to oppose laws providing for contraception, abortion or euthanasia. The Church has also maintained that Catholic politicians and citizens oppose laws recognizing same-sex marriage which the Church maintains violate natural laws dealing with marriage and procreation.

Cardinal Ratzinger further developed the argument on the moral obligation of Catholics on matters of public law to encompass the duty of Catholics to oppose same-sex marriage legislation in “Considerations Regarding Proposals to Give Legal Recognition to Unions Between Homosexual Persons.”<sup>84</sup> The “Consideration” begins by observing that the question of same-sex marriage fundamentally implicates the natural moral law.<sup>85</sup> It is argued that marriage by its very character involves the union of a man and a woman with the principal purpose of procreation.

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<sup>82</sup> Id. No. 4.

<sup>83</sup> Id. No. 6.

<sup>84</sup> Congregation for the Doctrine of the Faith, “Considerations Regarding Proposal to give legal Recognition to Unions Between Homosexual Persons” (June 3, 2003) [http://www.vatican.va/roman\\_curia/congregations/cfaith/documents/rc\\_con\\_cfaith\\_doc\\_20030731\\_homosexua\\_l-unions\\_en.htm](http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_20030731_homosexua_l-unions_en.htm)).

<sup>85</sup> Id. No. 1.

According to the Declaration: “There are absolutely no grounds for considering homosexual unions to be in any way similar or even remotely analogous to God’s plan for marriage and family.”<sup>86</sup>

The “Consideration” goes on to mention that “it is necessary to oppose legal recognition of homosexual unions.”<sup>87</sup> Specifically it is mandated that “all Catholics are obliged to oppose the legal recognition of homosexual unions. Catholic politicians are obliged to do so in a particular way, in keeping with their responsibility as politicians.”<sup>88</sup> Moreover, it is asserted that: “To vote in favor of a law so harmful to the common good is gravely immoral.”<sup>89</sup> It is significant that the teaching of the Magisterium is not only a constraint on Catholics entering into same-sex marriage, but as it serves as the basis for law, it restricts all persons no matter what their religious beliefs on same-sex marriage from having a relationship recognized by law.

It is significant that the limit of public order as a constraint on religious liberty is replaced in the “Consideration” with “the common good” as the basis for opposing a law which would extend to homosexuals the freedom to marry. While constraint on religious liberty is restricted by the needs of public order, consideration of the content of law involving moral values are determined by broadened requirements of the common good. Contrary to this understanding of the “common good” on what morality requires in relation to same-sex marriage, a significant number of Christian denominations have accepted same-sex marriage as morally consistent with their religious principles. Moreover, the Supreme Court of the United States has determined that there is a constitutional right for same-sex couples to marry which itself promotes the common good in the raising of children and the mutual support of same-sex partners.

The challenge to harmonize change and continuity in Church teaching on the issue of religious liberty far transcends the seeming resolution of the tension between the Church as having exclusive possession of truth and the recognition of a pluralism among religious faiths. The conflict between recognition of the limitation imposed by the notion of public order as a constraint on free exercise of religion as was mandated by *Dignatis Humanis Personae* and the assertion by the Magisterium that the common good demands enactment of laws constraining freedom of

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<sup>86</sup> Id. No. 4.

<sup>87</sup> Id. No. 6.

<sup>88</sup> Id. No. 10.

<sup>89</sup> Id.

conscience on fundamental moral questions imposes significant constraints not only on non-Roman Catholic members of civil society but all members of society constrained by laws enacted to enforce Roman Catholic understanding of morals. This provides a continuing challenge to reconcile the Roman Catholic Church's understanding of religious liberty or freedom with claims to religious liberty understood as freedom of conscience unconstrained by official teaching of the Roman Catholic Church.

### CONCLUSION

The Declaration of Religious Liberty of the Second Vatican Council constitutes an important development in the Church's teaching on religious liberty. It reflects a willingness on the part of the Church to embrace pluralism in religious practice and to recognize the legitimacy of other religious communities. The Declaration significantly abandons the ideal of the state professing a religion, while it continues to recognize the appropriateness of state support of religion. But just as significantly, the Declaration makes clear that the Catholic Church considers itself a church whose teaching on moral issues is rooted in natural law binding on all persons. While the Declaration suggests abandonment of the teaching of no salvation outside the Church, the Declaration leaves imposing traditional Catholic doctrine in law as a moral duty of Catholic politicians and citizens. In post-Vatican II pronouncements, the Magisterium, the official teaching authority of the Roman Catholic Church, has imposed on Catholic citizens and politicians the obligation to accept official Church teaching on important matters of public concern, which involve issues of morals, and to oppose enactment of laws contrary to Church teaching on such issues as procreation, abortion, euthanasia, and same-sex marriage. The Magisterium has declared the obligation of Catholic politicians and citizens to base their political action on the dictates of the natural law which are in conformity with the official teaching of the Roman Catholic Church. These post-Vatican II declarations not only result in restrictions on the freedom of conscience of members of the Church but limit the religious freedom of those subject to these laws. Such laws may directly limit the freedom of conscience and coerce members of other religious faith in matters they regard as subjects of faith and morals properly the subject of religious liberty, matters on which they have the right to be free from coercion.

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